

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHRIS WILLIAMS,

No. C-05-1337 JCS

Plaintiff,

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS FOR LACK  
OF PERSONAL JURISDICTION, OR,  
ALTERNATIVELY, MOTION TO  
TRANSFER VENUE [Docket No. 3]**

v.

BROWN FAMILY COMMUNITIES,

Defendant.  

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**I. INTRODUCTION**

Plaintiff, Christopher Williams, a California resident, entered into a contract to purchase a home that was to be built in a Phoenix, Arizona subdevelopment by Defendant, Brown Family Communities (“Brown”). On February 28, 2005, Williams brought a breach of contract action in California Superior Court. Brown removed the action to this Court, and now brings a Motion to Dismiss for Lack of Personal Jurisdiction, or Alternatively, Motion to Transfer Venue (“the Motion”). The Court determines that the Motion is suitable for determination without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons stated below, the Motion is GRANTED.

**II. BACKGROUND****A. Facts**

In June 2004, Williams entered into a purchase agreement with Brown for the purchase of a new home, which was to be built in Quail Hollow, a subdevelopment in the vicinity of Phoenix, Arizona. Compl. at 2, ¶ 6. Brown is “an Arizona entity engaged in the business of building residential communities exclusively in the state of Arizona.” Motion Ex. A, Affidavit of Robert Venberg (“Venberg Decl.”) at 1, ¶2.

Williams was represented by an Arizona real estate agent, Congress Realty, Inc. (“Congress”),<sup>1</sup> and apparently learned of the available lot through Congress. Greisiger Decl. at ¶ 3. According to Brown sales representative James Greisiger, Congress contacted Brown on Williams behalf to inquire about properties at Quail Hollow. *Id.* When Greisiger told Congress there was an available lot, Congress brought Williams’ security deposit to Brown’s office and, exercising a power of attorney signed by Williams, selected the upgrade options for the home. *Id.* Greisiger states in his declaration that neither he nor anyone else at Brown had had any contact with Williams prior to the inquiry by Congress. *Id.* at ¶ 5.

On June 15, 2004, Plaintiff executed an eight-page “Purchase Agreement and Receipt for Deposit” (“Purchase Agreement”) for the lot and home (“the Property”) for a price of \$161,068.00. *See* Williams Decl. at 1, ¶ 2 & Ex. A (Purchase Agreement).<sup>2</sup> According to Plaintiff, he executed the Purchase Agreement in San Francisco, California. Williams Decl. at 1, ¶ 2. The Purchase Agreement, which contains an Arizona choice of law provision, shows Plaintiff’s home address in San Francisco and home telephone number with a 415 area code. Purchase Agreement at 1; Williams Decl., Ex. A at 1. Michael Brown, a representative of Defendant, signed the Purchase Agreement in Defendant’s Tempe, Arizona office on July 9, 2004. Defendant’s Motion to Dismiss for Lack of Personal Jurisdiction, or Alternatively, Motion to Transfer Venue (“Motion”) at 2, ¶ 4; Venberg Decl. at 1, ¶ 4; Purchase Agreement at 8.

Williams obtained preliminary loan approval to finance the purchase of the Property from MDJ Mortgage. Williams Decl. at 2, ¶ 7; *see also* Venberg Decl. at 1, ¶ 5. Williams states in his declaration that MDJ is “to the best of [his] knowledge a wholly owned and controlled company” of Brown. Williams Decl. at 2, ¶ 4. The only evidence in the record, however, indicates that while there may be some connection between Brown and MDJ, MDJ is not owned by Brown. *See* Reply, Ex. B (Records of the

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<sup>1</sup> Although Williams does not mention Congress in his Opposition, he does not dispute Defendant’s assertion that Williams hired Congress to “help him locate a second home.” Motion, Ex. B (Affidavit of James M. Greisiger (“Greisiger Decl.”)), ¶ 2; *see also* Williams Decl., Ex. B (Realtor-Client Registration Form, reflecting that Congress represented Williams in the purchase of the Property).

<sup>2</sup> Plaintiff alleges in his complaint that he executed the Purchase Agreement on June 19, 2005 rather than June 15, 2005, as stated in his declaration. Complaint at 2, ¶ 6. The latter date appears to be correct. In particular, the Purchase Agreement reflects that it was received by Brown on June 15, 2005. *See* Purchase Agreement at 1.

1 Arizona Corporation Commission reflecting that MDJ Mortgage is owned by four individuals, including  
2 Michael D. Brown and Lisa A. Brown).

3 In June and July of 2004, Plaintiff and his realtor executed three addenda to the Purchase  
4 Agreement, ordering various upgrades for the home (flooring, appliances, landscaping, etc.). Williams  
5 Decl. at 2, ¶ 8; Ex. D.<sup>3</sup> According to Williams, he had “numerous discussions” with Brown “and/or its  
6 agents, including MDJ” in connection with these addenda. Williams Decl. at 2, ¶ 8. The upgrades brought  
7 the total purchase price to \$167,980. Defendant’s Reply, Ex. A, Affidavit of James M. Greisiger  
8 (“Greisiger Reply Decl.”) at 1, ¶ 1.

9 The addenda reflect a “Settlement Date” of December 28, 2004. *Id.* However, according to  
10 Plaintiff, Brown failed to turn over title by that date, after repeated demands by Plaintiff. Williams Decl. at  
11 2, ¶ 8. On February 7, 2005, Plaintiff’s attorney, Brian Donnelly, sent Brown a letter demanding that  
12 Brown close the sale before March 7, 2005, regardless of the stage of completion of the home. *See*  
13 Declaration of Brian Donnelly, Esq. in Opposition to Motion to Dismiss for Lack of Personal Jurisdiction  
14 and Motion to Transfer Venue (“Donnelly Decl.”) at 1-2, ¶¶ 2-9 & Ex. A (February 7, 2005 Letter).  
15 According to Donnelly, Brown sent him an e-mail on February 8, 2005, refusing to close the purchase by  
16 March 7, 2005. Donnelly Decl. at 2, ¶ 4. On February 15 and 17, Donnelly sent Brown two more letters  
17 demanding the purchase be closed by March 7, 2005, and threatening litigation if Brown did not agree to  
18 arbitrate pursuant to the arbitration provision in the Purchase Agreement. *Id.* at 2, ¶¶ 5, 7. Brown  
19 responded in a letter dated February 23, 2003, rejecting Plaintiff’s demand and asserting that “any attempt  
20 to file an arbitration or litigation will needlessly waste time and money” because, among other things,  
21 Williams had materially breached the Purchase Agreement when he failed to obtain loan approval after the  
22 initial approval fell through. Greisiger Reply Decl., Ex. C (February 23, 2005 Letter).<sup>4</sup> Brown offered to  
23 allow Williams to rescind the contract and obtain a refund on his deposit if he responded by February 28,

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25 <sup>3</sup> Although Williams states in his declaration that four addenda were executed, the record contains only  
26 three addenda, dated June 15, June 23, and July 26, 2004. *See* Williams Decl., Ex. D.

27 <sup>4</sup> According to the February 23, 2005 Letter, “[a]lthough Mr. Williams initially obtained preliminary  
28 loan approval, his approval was revoked when he opted to exercise a 1031 exchange. We also understand  
that his credit history has materially deteriorated because he incurred additional debt after the preliminary  
underwriting phase. As such, Mr. Williams is currently in breach of the contract.”

2005, but stated that after that date it would terminate the contract without refunding the deposit. On February 28, 2005, Plaintiff initiated this action.

### **B. Procedural Background**

In his Complaint, Plaintiff alleges that although the addenda to the Purchase Agreement indicated that the settlement date for the property was December 28, 2004, and although Plaintiff made repeated demands for performance, Defendants failed to deliver the Property to Plaintiff by December 28, 2005.<sup>5</sup> Complaint at 2, ¶¶ 6-10. Plaintiff demands damages and “specific performance of the Purchase Agreement,” as well as attorneys’ fees and costs. The Complaint specifies no dollar amount for damages.

Defendant removed the action to this Court on April 1, 2005, pursuant to 28 U.S.C. § 1446(a), alleging that federal diversity jurisdiction existed under 28 U.S.C. § 1332 because Plaintiff was a California resident, Defendant was an Arizona resident, and the amount in controversy exceeded \$75,000. Notice of Removal at 1. On April 4, 2005, Defendant filed the instant Motion.

### **C. The Motion**

Defendant moves to dismiss this action under Federal Rule of Civil Procedure 12(b)(2), or alternatively, to transfer this case to the District of Arizona under Rule 12(b)(3). Motion at 1. Defendant contends that exercise of personal jurisdiction over it would violate the Due Process clause of the U.S. Constitution – which governs the personal jurisdiction inquiry under California’s long-arm statute – because: 1) it has not purposefully availed itself of the privilege of the conducting activities in California; and 2) exercise of personal jurisdiction would not comport with the principles of fair play and substantial justice. In support of its position, Brown points to evidence that Brown has virtually no on-going contacts with California:

Brown does not sell, provide services or transact any business in California. Brown is not licensed or authorized to do business in California. Brown maintains no offices, records, accounts, salespersons, or agents in California. Brown does not own any real property, personal property or other assets in California. Brown does not advertise in California.

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<sup>5</sup> Although the Complaint does not list any specific claim or claims, it appears to assert only a claim for breach of contract.

1 Venberg Decl. at 1, ¶ 3. In the alternative, Defendant argues that the Court should transfer venue to the  
2 District of Arizona “because the witnesses, property, and defendant are all located in Arizona.” Motion at  
3 7-8.

4 In his Opposition, Plaintiff claims that subject matter jurisdiction is improper in this Court because  
5 the amount in controversy does not exceed \$75,000. Opposition at 3-4. In support of this assertion,  
6 Plaintiff stipulates that he will not seek damages in excess of \$75,000 and waives his request for specific  
7 performance. Declaration of Brian Donnelly, Esq., in Opposition to Motion to Dismiss for Lack of  
8 Personal Jurisdiction and Motion to Transfer Venue (“Donnelly Decl.”) at 3, ¶¶ 111-12. Plaintiff also  
9 asserts that specific performance is impossible in any event because the contract had to be completed by  
10 December 28, 2004. Plaintiff argues further that there is personal jurisdiction over Brown because Brown  
11 was aware that Plaintiff was a California resident when it entered into the Purchase Agreement and  
12 therefore knew that he would be harmed in California. In his discussion of personal jurisdiction, Plaintiff  
13 treats Brown and MDJ as a single entity. Finally, with respect to venue, Plaintiff asserts that venue in this  
14 district is proper under 28 U.S.C. § 1441(a), which provides that in removed actions, venue is proper in  
15 the district court for the district in which the action was pending. Plaintiff also asserts that a convenience  
16 transfer is not appropriate here because the balance of hardships does not tip strongly in favor of  
17 Defendant.

18 Defendant in its Reply argues that this Court has subject matter jurisdiction, notwithstanding  
19 Plaintiff’s stipulations regarding damages and specific performance, because the amount-in-controversy  
20 requirement need only be met at the time of removal. Reply at 1. Subsequent stipulations limiting the relief  
21 sought cannot divest this Court of jurisdiction. Reply at 1. Defendant argues further that at the time of  
22 removal, the amount-in-controversy requirement was met because Plaintiff sought damages for lost taxes  
23 “in excess of \$60,000” as well as specific performance of the Purchase Agreement. *Id.* at 2; Donnelly  
24 Decl. Ex. A (letter from Donnelly to Defendant). According to Defendant, the value of specific  
25 performance *alone* satisfies the amount-in-controversy requirement because the price set forth in the  
26 Purchase Agreement and subsequent addenda is substantially lower than the current value of the Property.  
27 In particular, Defendant presents evidence that the value of the Property increased from \$167,980 in July  
28 2004 to \$260,845 in June 2005 – an appreciation of \$92,865. *Id.* at 3; Greisiger Reply Decl. at 1, ¶ 4.

Defendant goes on to reject Plaintiff's assertion that Defendant's knowledge of Plaintiff's residency is sufficient to give rise to personal jurisdiction, arguing again that there is no personal jurisdiction over Defendant and/or that venue should be transferred to Arizona.

### III. ANALYSIS

#### A. Priority in Deciding Questions of Subject Matter Jurisdiction, Personal Jurisdiction and Venue

This motion implicates matters of subject matter jurisdiction, personal jurisdiction and venue. Normally, a court will examine subject matter jurisdiction before turning to personal jurisdiction due to "both expedition and sensitivity to state courts' coequal stature." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 587-88 (1999). Further, consideration of personal jurisdiction typically precedes venue because the former concerns "the court's power to exercise control over the parties" while venue "is primarily a matter of choosing a convenient forum." *Leroy v. Great Western United Corp.*, 443 U.S. 173, 180 (1979) (citations omitted). Accordingly, the Court considers subject matter jurisdiction first, followed by personal jurisdiction and then venue.

#### B. Subject Matter Jurisdiction

##### 1. Legal Standard

Under the federal removal statute, 28 U.S.C. § 1441(a), a defendant may remove to federal court any civil action filed in state court over which federal courts have original jurisdiction. *See Wisconsin Dep't of Corr. v. Schacht*, 524 U.S. 381, 386 (1998). Plaintiff does not assert a federal claim; thus this Court may have subject matter jurisdiction only on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332(a), which requires that all plaintiffs be diverse from all defendants, and that the value of the case in controversy exceed \$75,000.

"Generally, the amount in controversy is determined from the face of the pleadings." *Crum v. Circus Circus Enterprises*, 231 F.3d 1129, 1131 (9th Cir. 2000) (citations omitted). "The sum claimed by the plaintiff controls so long as the claim is made in good faith." *Id.* (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-90 (1938)). Where the complaint does not set forth a dollar amount of damages, however, the removing defendant has the burden of proving by a preponderance of evidence that the amount in controversy exceeds the jurisdictional requirement. *Sanchez v. Monumental*

1 *Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). “Under this burden, the defendant must provide  
2 evidence establishing that it is ‘more likely than not’ that the amount in controversy exceeds that amount.”  
3 *Id.*

4 “[J]urisdiction must be analyzed on the basis of the pleading filed at the time of removal without  
5 reference to subsequent amendments.” *Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042,  
6 1046 n.3 (9th Cir. 2000) (quoting *Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers*, 159 F.3d 1209,  
7 1213 (9th Cir. 1998)). “[E]vents occurring subsequent to removal which reduce the amount recoverable,  
8 whether beyond the plaintiff’s control or the result of his volition, do not oust the district court’s jurisdiction  
9 once it has attached.” *Red Cab*, 303 U.S. at 293.

10 In determining whether the amount in controversy requirement is met, courts may consider not only  
11 damages but also the cost to the defendant of specific performance. *See Sanchez*, 102 F.3d at 405 (*citing*  
12 *Ridder Bros., Inc. v. Blethen*, 142 F.2d 395, 399 (9th Cir. 1944) (holding that for purposes of calculating  
13 amount-in-controversy, “[t]he value of the thing sought to be accomplished by the action may relate to  
14 either or any party to the action”). Courts also may consider reasonable attorneys’ fees if that are  
15 recoverable under a statute or contract. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th  
16 Cir. 1998).

## 17 2. Value of Relief Sought by Williams

18 Because Plaintiff does not specify a dollar amount of damages in his Complaint, Defendant bears  
19 the burden of proving by a preponderance of the evidence that the amount in controversy requirement is  
20 met. *See Sanchez*, 102 F.3d at 404. The Court concludes that Defendant has met this burden based on  
21 the prayer for specific performance in Plaintiff’s Complaint. In particular, Defendant has provided a  
22 declaration stating that the current market rate for the house Williams purchased is \$260,845, which is over  
23 \$90,000 more than the price specified in the Purchase Agreement plus the additional cost of the upgrades  
24 in the addenda. *See Greisiger Reply Decl.* at ¶ 4. This amount satisfies the amount in controversy  
25 requirement.

26 The Court rejects Plaintiff’s suggestion that the value of specific performance should not be  
27 considered because specific performance is impossible, given that the addenda required title to be  
28 transferred by December 28, 2004. In order to accept this argument, the Court would have to read the



1 Complaint as requesting relief that could not have been awarded even at the time the action was filed (in  
2 February 2005). The Court declines to adopt such a tortured reading of the Complaint. Rather, a more  
3 sensible reading of the Complaint is that Plaintiff in his request for specific performance sought to obtain title  
4 to the Property, as envisioned by the Purchase Agreement. The Court also rejects Plaintiff's attempt to  
5 limit the amount in controversy by stipulation. As discussed above, the amount in controversy is considered  
6 on the basis of the complaint at the time of removal. Defendant has shown by a preponderance of the  
7 evidence that the amount in controversy requirement is satisfied and this Court has subject matter  
8 jurisdiction over the action.

## 9 **B. Personal Jurisdiction**

### 10 **1. Legal Standard**

11 In response to a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(2) of the  
12 Federal Rules of Civil Procedure, the plaintiff bears the burden of proving that the exercise of personal  
13 jurisdiction is proper. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001); *Cabbage v. Merchant*,  
14 744 F.2d 665, 667 (9th Cir. 1984). Where the court does not hold an evidentiary hearing but decides  
15 issues of jurisdiction based upon the pleadings and supporting affidavits, the plaintiff need only make a  
16 prima facie case, and the court presumes that uncontroverted facts set forth therein are provable. *Unocal*,  
17 248 F.3d at 922 (quoting *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995)); *Bancroft & Masters*,  
18 *Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1085 (9th Cir. 2000). Factual conflicts which arise in the  
19 parties' affidavits must be resolved in the plaintiff's favor. *Unocal*, 248 F.3d at 922 (quoting *AT & T v.*  
20 *Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996)). On the other hand, if the Court  
21 holds an evidentiary hearing or proceeds to trial, plaintiff bears the ultimate burden of establishing personal  
22 jurisdiction by a preponderance of the evidence. *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d  
23 1280, 1285 (9th Cir. 1977).

### 24 **2. General and Specific Jurisdiction**

25 Under California's long-arm statute, Cal. Code Civ. Proc. § 410.10, federal courts in California  
26 may exercise jurisdiction to the extent permitted by the Due Process Clause of the Constitution. *Core-*  
27 *Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482 (9th Cir. 1993). The Due Process Clause, in turn, allows  
28 federal courts to exercise jurisdiction where either: 1) the defendant has had continuous and systematic



contacts with the state sufficient to subject him or her to the general jurisdiction of the court; or 2) the defendant has had sufficient minimum contacts with the forum to subject him or her to the specific jurisdiction of the court. *Id.* As it is undisputed that there is not general jurisdiction over Defendant, the remainder of this section addresses specific jurisdiction.<sup>6</sup>

To determine whether a court may exercise specific jurisdiction over a defendant, the court must first inquire whether the nonresident defendant “established ‘minimum contacts’ with the forum State” via “purposeful availment” of the benefits and protections of that State’s laws. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75 (1985). Courts must then consider the reasonableness and foreseeability of suing a noncitizen based upon his contacts: bringing the noncitizen to court in a distant forum must comport with Due Process norms of “fair play and substantial justice.” *Int’l Shoe Co. v. State of Washington*, 326 U.S. 310, 320 (1945). Foreseeability alone is not a sufficient basis for exercising personal jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980) (holding that there was no personal jurisdiction over automobile manufacturer in state with which it had virtually no contacts even though it was foreseeable that automobile might cause harm in that state).

Applying the principles of *Burger King*, the Ninth Circuit has developed a three-prong test to evaluate whether a defendant’s contacts allow a State to subject him to specific jurisdiction:

- (1) The nonresident defendant must do some act or consummate some transaction with the forum state or perform some act by which it purposefully avails itself of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of its laws;
- (2) the claim must arise out of or result from the defendant’s forum-related activity; and/or
- (3) the exercise of jurisdiction must be reasonable.

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<sup>6</sup> While objections to personal jurisdiction can be expressly or impliedly waived, *see* Fed. R. Civ. P. 12(h)(1), a defendant’s choice to first remove an action to federal court before seeking to challenge personal jurisdiction does not constitute a waiver of objections to personal jurisdictional. *See Diesli v. Falk*, 916 F. Supp. 985, 994 (C.D. Cal. 1996) (noting, in dictum, that a defendant does not waive jurisdictional challenges by removing from state to federal court) (quotation omitted); *Product Components, Inc. v. Regency Door & Hardware, Inc.*, 568 F. Supp. 651, 655 (S.D. Ind. 1983) (“Upon removal a defendant may assert any defense that would have been available to him in state court and which has not been lost through the operation of either Fed. R. Civ. P. 12(g) or (h).”); *cf. Schacht*, 524 U.S. at 389-90 (holding a state can implicitly waive sovereign immunity defenses by removal to federal court).

1 *Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287 F.3d 1182, 1188-89 (9th Cir. 2001). If the plaintiff  
 2 meets the first ('purposeful availment') and second ('arising out of') prongs, the defendant bears the burden  
 3 of proving that the exercise of personal jurisdiction is unreasonable. *See Sinatra v. Nat'l Enquirer*, 854  
 4 F.2d 1191, 1198 (9th Cir. 1987) (citing *Corporate Inv. Brokers v. Melcher*, 824 F.2d 786, 790 (9th  
 5 Cir. 1978)).

### 6 3. Purposeful Availment

7 Defendant asserts that it did not purposefully avail itself of the benefits of the laws of California by  
 8 contracting with Plaintiff and, therefore, that there is no personal jurisdiction. The Court agrees.

9 Defendant has presented evidence that it took no affirmative acts to sell its properties to California  
 10 residents in general or to Plaintiff specifically. Rather, Plaintiff approached Defendant via an Arizona real  
 11 estate agent to buy an Arizona property. There is no evidence in the record that any Brown representative  
 12 ever traveled to California to consummate the transaction with Plaintiff. In fact, the only contacts with  
 13 California in this case are an unspecified number of telephone calls – some of which apparently were with  
 14 MDJ rather than Defendant – and, apparently, the exchange of at least one document (the Purchase  
 15 Agreement). Under very similar circumstances, at least one district court has held that there was no  
 16 personal jurisdiction. *See Siskiyou Props., L.L.C. v. Bennett Holdings L.C.*, 1999 WL 1038729 (D.  
 17 Or.), \*1, \*5, *aff'd* 13 Fed. Appx. 553, 556 (2001).

18 In *Siskiyou*, an individual, Eric Bunn, who assigned his rights to an Oregon company, Siskiyou,  
 19 entered into a purchase agreement with an Idaho company, Bennett, for the purchase of real property  
 20 located in Idaho. *Id.* at \* 1. The property was not conveyed to Bunn or Siskiyou, and Siskiyou sued  
 21 Bennet in Oregon for specific performance. *Id.* Bennett brought a motion to dismiss on the basis that the  
 22 court lacked personal jurisdiction. Siskiyou argued that there was personal jurisdiction based on numerous  
 23 communications by telephone, mail and facsimile regarding the transaction. *Id.* at \* 4. The court disagreed.  
 24 It reasoned as follows:

25 The existence of a contract with a resident of the forum state is insufficient  
 26 by itself to create personal jurisdiction over the nonresident. . . . However,  
 27 the Supreme Court also stated that "with respect to interstate contractual  
 28 obligations, we have emphasized that parties who 'reach out beyond one  
 state and create continuing relationships and obligations with citizens of  
 another state' are subject to regulation and sanctions in the other State for  
 the consequences of their activities." . . . Acknowledging this rule of law,

the Ninth Circuit has stated that “the ‘purposeful availment’ requirement is satisfied if the defendant has taken deliberate action within the forum state or if he has created continuing obligations to forum residents.” . . . The interaction between Bennett and Bunn (the original party to the Agreement) was an isolated sale transaction that . . . did not create the type of continuing relationship or continuing obligations to Oregon residents or business entities that would allow this court to exercise personal jurisdiction over Bennett. Furthermore, although there may have been a large amount of documentation and communications exchanged between Bennett and Bunn as part of the sale, those contacts are insufficient to create personal jurisdiction in the absence of a representative or agent of Bennett traveling to Oregon as part of the transaction.

*Id.* at \*5.

The Court finds the reasoning of *Siskiyou* persuasive and similarly concludes that under the circumstances here, the contacts between Williams and Brown are not sufficient to show purposeful availment. Therefore, the Court lacks personal jurisdiction over Defendant.

### C. Venue

Having determined that the Court lacks personal jurisdiction over Defendant, the Court turns to the question of whether it should dismiss the action or transfer it to Arizona, where personal jurisdiction would likely exist. The Court concludes that dismissal is appropriate.

Under 28 U.S.C. § 1404(a), a court may transfer venue for “the convenience of the parties” or “in the interest of justice.” Many district courts have concluded that it is permissible to transfer venue under 28 U.S.C. § 1404(a) regardless whether the court has personal jurisdiction over the defendant. *See Kawamoto v. CB Richard Ellis, Inc.*, 225 F. Supp. 2d 1209, 1211-15 (D. Haw. 2002). Here, however, neither convenience nor justice require such a transfer. First, Defendant has not made the sort of strong showing of inconvenience that courts have found sufficient to upset the plaintiff’s choice of forum. *See Decker Coal v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). Second, transfer rather than dismissal is not required in the interest of justice because Plaintiff has made no showing that he stands to lose any part of his cause of action if it is dismissed.

### IV. CONCLUSION

The Motion is GRANTED. This action is DISMISSED without prejudice for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: July 11, 2005

/s/ Joseph C. Spero  
JOSEPH C. SPERO  
United States Magistrate Judge